

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

ANDREW BARRETT,

Plaintiff,

v.



CORRECTIONAL OFFICER MOODY,  
CORRECTIONAL OFFICER  
SWINDLE, and CORRECTIONAL  
OFFICER PAYNE,

Defendants.

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**DECISION AND ORDER**

Pro se plaintiff Andrew Barrett, an inmate at the Wende Correctional Facility, commenced this action pursuant to 42 U.S.C. § 1983 against Defendants Moody, Swindle, and Payne. Dkt. 1. Barrett alleges that Defendants used excessive force in violation of his Eighth Amendment rights. *Id.* at 5. Barrett also filed a “motion to go home” (Dkt. 42).

On September 3, 2019, United States District Judge Lawrence J. Vilardo referred this case to United States Magistrate Judge H. Kenneth Schroeder for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 11. On February 18, 2020, the Clerk of Court reassigned the case to this Court. Dkt. 20.

Defendants moved for summary judgment. Dkt. 37. Barrett responded, and Defendants replied. Dkts. 39, 41. On February 23, 2023, Judge Schroeder issued a Report and Recommendation (“R&R”) recommending that this Court grant Defendants’ motion for summary judgment (Dkt. 37) and deny Barrett’s “motion to

go home" (Dkt. 42). Dkt. 43, at 18. The parties did not object to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

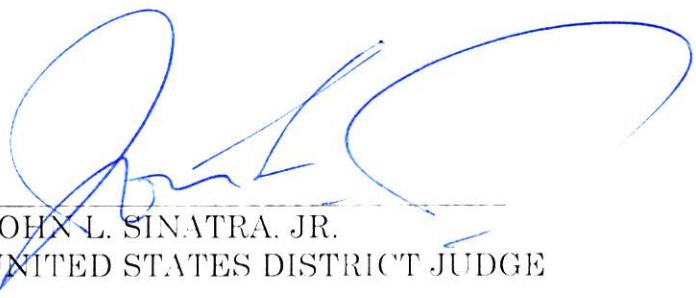
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

This Court has reviewed Judge Schroeder's R&R as well as the relevant record. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendations to grant Defendants' motion for summary judgment (Dkt. 37) and deny Barrett's "motion to go home" (Dkt. 42).

For the reasons stated above and in the R&R, Defendants' motion for summary judgment (Dkt. 37) is GRANTED and Barrett's "motion to go home" (Dkt. 42) is DENIED. The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: April 10, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE